

September 30, 2009

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-143

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

ALFRED McCARTER

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

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\* \* \* \*

WEDNESDAY, SEPTEMBER 30, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4  
5 Transcript of proceedings in the above  
6 matter taken by Theresa O. Mastroianni, Certified  
7 Court Reporter, license number 30X100085700, and  
8 Notary Public of the State of New Jersey at the  
9 United States District Court House, One Gerry Plaza,  
10 Camden, New Jersey, 08102, commencing at 11:30 AM.  
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16  
17  
18

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22 Audubon, New Jersey 08106  
23 856-546-1100  
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25

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1 THE COURT: I am reopening proceedings  
2 in the matter of Alfred McCarter. And that's docket  
3 number 08-143.

4 This opinion report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of  
12 Mr. McCarter.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Alfred McCarter was housed on F Unit  
18 and describes certain events that he alleges occurred  
19 to him on August 1, 1997. He recounts first about a  
20 confrontation, a scuffle, regarding Inmate Torres,  
21 also known as King Boogie. And indicates that SOG  
22 officers were called to the location in F Unit in  
23 order to handle the transportation of Mr. Torres off  
24 that unit after he had been subdued by Bayside  
25 officers who were on the premises.

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1           The log book, D-29, reflects that  
2   between 3:55 and 4:05 PM the SOG unit responded and  
3   effectuated the removal of Mr. Torres from F Unit.  
4   Therefore, at least according to the log, the SOGs  
5   would only have been in that area for approximately  
6   ten minutes total.

7           Mr. McCarter then testifies about an  
8   alleged incident in which the SOGs, part of the unit  
9   sent to secure and remove Mr. Torres, apparently took  
10   a side trip into his cell. And he describes it as  
11   follows beginning at page 56, line 11 of his  
12   transcript generated on March 12, 2009.

13           "Question: Give me an estimate of time  
14   between the time you observed Mr. Boogie being  
15   assaulted and the time when the SOG officers came to  
16   your cell door.

17           "Answer: Five minutes.

18           "Question: And how many officers  
19   approached your cell?

20           "Answer: Well, there was two at the  
21   door, but there was a whole lot of officers on the  
22   unit.

23           "Question: And did they give you any  
24   orders?

25           "Answer: Strip down, kneel on the

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1 floor, place your hand behind your head, cross your  
2 ankles and lace your fingers behind your head and  
3 face the window.

4 "Question: And did you do that?

5 "Answer: Yes.

6 "Question: And then what happened?

7 "Answer: Then they opened the door and  
8 instructed both of us to get on bunks. My bunkie  
9 first, because he was on the top bunk, then I got on  
10 the bunk. Once again, you lay with your hands  
11 interlaced behind your head, facing the wall.

12 "Question: Okay. And then what  
13 happened?

14 "Answer: For whatever reason, he hit  
15 me.

16 "Question: And one of the two SOG  
17 officers struck you?

18 "Answer: Yeah.

19 "Question: How many times?

20 "Answer: I would say over three.

21 "Question: Where were you hit?

22 "Answer: In my lower back.

23 "Question: With what were you hit?

24 "Answer: A baton.

25 "Question: And these strikes, were

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1 they preceded by any command to you?

2 "Answer: No.

3 "Question: Any statements made to you  
4 regarding the purpose of why they were going to hit  
5 you? Any threats they were going to hit you?

6 "Answer: No.

7 "Question: Did you say anything to  
8 them when you were struck?

9 "Answer: No."

10 That basically is the recounting of the  
11 events in question.

12 He also testified later on about the  
13 nature of the injuries from this particular incident,  
14 and even though he noticed that because he was on the  
15 lower bunk and the ability of the officer to swing  
16 the club was restricted, nevertheless he had  
17 recurrent and long-lasting lower back pain, according  
18 to his testimony.

19 However, there are certain other  
20 features of the evidence introduced in the course of  
21 this case that cast considerable doubt on the  
22 accuracy of this testimony and support a  
23 determination that the plaintiff has failed to  
24 sustain his burden of proving the assault against  
25 him.

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1 On at least one occasion in the course  
2 of his cross-examination without any hesitation he  
3 testified that the SOG officers there were wearing  
4 ski masks. This record as developed in the course of  
5 these proceedings has indicated that the SOG officers  
6 did not wear ski masks. One, it wasn't a part of  
7 their standard uniform. And two, as we know, we were  
8 in the middle of August of 1997; so a ski mask is an  
9 extremely uncomfortable piece of attire for that time  
10 of year.

11 Mr. McCarter was equally sure that  
12 Officer Platt, the housing officer assigned to F Unit  
13 at that time, was involved in the scuffle with Mr.  
14 Torres. However, pursuant to the incident reports  
15 filed by officers who were involved in that scuffle,  
16 Officer Platt was not involved in that. Furthermore,  
17 Officer Platt testified here that as housing officer  
18 he remained in the area of the podium throughout that  
19 day, his main assignment.

20 And finally, at least in this regard, I  
21 find that the ability of the SOG officers to stage a  
22 foray into a particular cell was extremely limited,  
23 if not non-existent. Let us remember in the first  
24 instance here that Mr. Torres was not being extracted  
25 from a cell. He had acted out while outside of his



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1 cell, my best recollection is in the hallway on the  
2 way to the use of a telephone. Torres had been  
3 subdued and was now to be removed by SOG. There was  
4 no reason, therefore, for SOG to go into any cells  
5 and hence no reason for the Bayside officers to  
6 activate the unlocking mechanisms that the cells  
7 required. But more than that, even if there had been  
8 a reason for the cells to be unlocked, SOG officers  
9 would not have just been able to waltz down the  
10 hallway and into a cell.

11 As testified to by Officer Platt  
12 beginning at page 16 of his testimony on April 16th,  
13 2009 at line six.

14 "Question: Now, the plaintiff also  
15 testified on this -- on the same day of the incident  
16 involving Inmate Torres that two SOG officers came to  
17 his cell unescorted by any Bayside officers and  
18 opened his cell and they proceeded to assault him,  
19 okay. As the housing officer, would the two SOG  
20 officers be able to go to an inmate's cell and open  
21 the cell by themselves?

22 "Answer: No.

23 "Question: Why not?

24 "Answer: Because I controlled the  
25 paracentric keys that opened individual -- all the

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1 individual cells.

2 "Question: And did it require a second  
3 officer to assist in opening the cells?

4 "Answer: Yes.

5 "Question: And how was that done?

6 "Answer: I would either call a  
7 supervisor and get a GA over, a general assignment  
8 officer, and they would come over and assist.

9 "Question: Would they have to use a  
10 hand key to open the cell as well?

11 "Answer: Yes. I would more than  
12 likely have given them a key because then I would  
13 have had to unsnap the line at the locking device.

14 "Question: Right.

15 "Answer: Up at the podium.

16 "Question: Okay. And then what would  
17 the other officer had to have done?

18 "Answer: He would have had to went  
19 down the tier and physically turn the key of the  
20 cell.

21 "Question: To open the cell door?

22 "Answer: To open the cell door.

23 "Question: Now, as a housing officer,  
24 would you have allowed two SOG officers to go down to  
25 a cell unescorted to open up a cell door?

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1 "Answer: No.

2 "Question: Is that something that to  
3 the best of your recollection that occurred at the  
4 time that you were working in a unit?

5 "Answer: No. Excuse me?

6 "Question: Sure. To the best of your  
7 recollection, again, is that something that you  
8 allowed to occur at the time that you were working as  
9 a housing officer?

10 "Answer: No."

11 So it's quite clear, one, the SOG  
12 officers were not wearing ski masks. Two, there was  
13 no reason for the entry into the cells that might  
14 have followed the unlocking of the tier or of any  
15 individual cells. And three, the SOG officers would  
16 not have been permitted to essentially be given a key  
17 and go down the hallway themselves for the purpose of  
18 unlocking and entering a cell.

19 In addition to that, there is nothing  
20 in this record which would indicate any reason  
21 whatsoever for the SOG team to have been there for  
22 any purpose other than to extract Mr. Torres and, in  
23 fact, the time frame of their presence there  
24 (approximately ten minutes) is the time frame which I  
25 find would be necessary to devote themselves to those

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1 duties, namely securing Mr. Torres and then  
2 effectuating his removal from F Unit.

3 Finally, although not every item of  
4 evidence has been discussed in this opinion/report,  
5 all evidence presented to the Special Master was  
6 reviewed and considered.

7 For the reasons set forth above, I  
8 recommend in this report that the district court  
9 enter an order and judgment of no cause for action  
10 with regard to Alfred McCarter.

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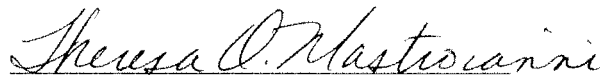
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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XI0857  
Date: October 1, 2009

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